

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: CORE SCIENTIFIC, INC., et al., Debtors.¹	§ Chapter 11 § § Case No. 22-90341 (DRJ) § § (Jointly Administered)
---	--

**SPHERE 3D CORP.'S MOTION TO SEAL
SPHERE 3D CORP.'S OBJECTION TO THE DEBTORS' MOTION FOR SUMMARY
JUDGMENT AND SPHERE 3D CORP.'S CLAIM OBJECTION RESPONSE**

Sphere 3D Corp. (“**Sphere**”) respectfully states the following in support of *Sphere 3D’s Corp.’s Motion to Seal Sphere 3D Corp.’s Objection to the Debtors’ Motion for Summary Judgment and Sphere 3D Corp.’s Claim Objection Response* (the “**Motion**”):

RELIEF REQUESTED

1. Sphere files this Motion to request entry of an order, substantially in the form attached hereto (the “**Proposed Order**”), authorizing Sphere to: (i) file a redacted version of *Sphere 3D’s Objection to Debtors’ Motion for Summary Judgment with Respect to Proof of Claim Nos. 358 and 359 filed by Sphere 3D Corp.* (the “**MSJ Opposition**”), which redacts certain commercially sensitive information; (ii) file a redacted version of the to-be-filed response to the *Debtors’ Objection to Proofs of Claim Nos. 358 and 359 filed by Sphere 3D Corp.* [Docket No. 869] (the “**Claim Objection**” and Sphere’s to-be-filed response the “**Claim Objection Response**”); and (iii) to file under seal an unredacted version of both the MSJ Opposition and the

¹ The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Core Mining LLC (6971); Core Scientific, Inc. (3837); Core Scientific Acquired Mining LLC (N/A); Core Scientific Operating Company (5526); Radar Relay, Inc. (0496); Core Scientific Specialty Mining (Oklahoma) LLC (4327); American Property Acquisition, LLC (0825); Starboard Capital LLC (6677); RADAR LLC (5106); American Property Acquisitions I, LLC (9717); and American Property Acquisitions, VII, LLC (3198) (collectively, the “**Debtors**”). The Debtors’ corporate headquarters and service address is 210 Barton Springs Road, Suite 300, Austin, Texas 78704.

Claim Objection Response which shall remain confidential and under seal and not made available to anyone without the consent of the Sphere and the Debtors or further order of the Court².

2. The redacted MSJ Opposition has been filed with this Court at Docket No. 1039.

3. The Claim Objection Response will be filed with the Court on Monday, July 10, 2023.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 9013-1 and 9037-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas.

BACKGROUND

6. On December 21, 2022, the Debtors filed voluntary petitions for relief under chapter 11 of the bankruptcy code (the “**Petition Date**”).

7. On May 9, 2023, the Debtors filed the Claim Objection, and on June 2, 2023, Sphere and Debtor Core Scientific Inc. (“**Core**”) filed the *Joint Stipulation and Agreed Order (I) Extending Deadlines with Respect to Debtors’ Objection to Proofs of Claim Nos. 358 and 359 Filed by Sphere 3D Corp. (II) Suspending Discovery Pending Further Order* [Docket No. 951] (the “**Joint Stipulation**”).

² The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”).

8. On June 6, 2023, the Court entered an order granting the Joint Stipulation [Docket No. 956] (the “**Joint Stipulation and Agreed Order**”). Pursuant to the Joint Stipulation and Agreed Order, the parties agreed: (i) all discovery regarding the Sphere’s proofs of claim and the Claim Objection would be suspended until after a non-evidentiary hearing and scheduling conference setting discovery, litigation deadlines, and a trial date related to Sphere’s proofs of claim and the Claim Objection; (ii) extending Sphere’s deadline to respond to the Claim Objection until Monday, July 10, 2023; and (iii) Sphere and Core agreed to confer on a proposed scheduling order for discovery, litigation schedule, and trial date on the Claim Objection to file and present to the Court at a scheduling conference to be held after Sphere filed its response to the Claim Objection.

9. On June 9, 2023, the Debtors filed the *Debtors’ Motion for Summary Judgment with Respect to Proof of Claim Nos. 358 and 359 filed by Sphere 3D Corp.* (the “**MSJ**”).

BASIS FOR RELIEF

10. The relief requested herein is supported by sections 105(a) and 107(b) of the Bankruptcy Code. Specifically, under section 107(b) of the Bankruptcy Code, the Court is authorized to issue orders to protect entities with respect to certain confidential or commercial information. 11 U.S.C. § 107(b). Further, section 105(a) of the Bankruptcy Code, which codifies the Court’s inherent equitable powers, empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

11. Bankruptcy Rule 9018 implements section 107(b) of the Bankruptcy Code and provides in relevant part: “On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information[.]” Fed. R.

Bankr. P. 9018. Furthermore, Bankruptcy Local Rule 9037-1 authorizes the Court to limit public access to certain documents.

12. Here, both Sphere’s MSJ Opposition and Claim Objection Response include non-public sensitive commercial information, public disclosure of which Sphere recognizes could be competitively harmful to the Debtors. In fact, the Debtors specifically omitted the material redacted in Sphere’s MSJ Opposition and Claim Objection Response for this precise reason.³ *See* MSJ, Exs. 3 and 4 (noting “Confidential portion has been omitted because it (i) is not material and (ii) would be competitively harmful if publicly disclosed); Claim Objection, Exs. 3 and 4 (same).

13. In light of the foregoing, Sphere asks the Court for authority to: (i) file redacted versions of the MSJ Opposition and Claim Objection Response both of which will be publicly available; and (ii) file unredacted versions of the MSJ Opposition and Claim Objection Response under seal.

CONCLUSION

WHEREFORE, Sphere respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested in this Motion, and granting such other and further relief the Court deems just and proper.

[Remainder of Page Left Blank Intentionally]

³ The redactions also include the redaction of certain personal information—including an email and cell-phone number.

Dated: July 7, 2023

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II
TX Bar No. 24012503
Ashley L. Harper
TX Bar No. 24065272
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200
Facsimile: (713) 220-4285
E-mail: taddavidson@HuntonAK.com
ashleyharper@HuntonAK.com

Tibor L. Nagy, Jr.
TX Bar No. 24041562
Gregory N. Wolfe (admitted *pro hac vice*)
DONTZIN NAGY & FLEISSIG LLP
980 Madison Avenue
New York, New York 10075
Telephone: (212) 717-2900
Email: tibor@dnflp.com
greg@dnflp.com

- and -

Seth H. Lieberman (admitted *pro hac vice*)
Matthew W. Silverman (admitted *pro hac vice*)
PRYOR CASHMAN LLP
7 Times Square
New York, New York 10036
Telephone: (212) 421-4100
Facsimile: (212) 326-0806
E-mail: slieberman@pryorcashman.com
msilverman@pryorcashman.com

- and -

Co-Counsel for Sphere 3D Corp.

CERTIFICATE OF SERVICE

I certify that on July 7, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices in this adversary proceeding.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II